

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:20-cv-00417-BO

**Performance Automotive Group, Inc.,
a North Carolina Corporation, d/b/a
Performance Chrysler Dodge Jeep
Ram,**

Plaintiff,

v.

Jonathan Fernandez,

Defendant.

Order

Plaintiff Performance Automotive Group, Inc.'s motion to compel is denied. D.E. 33. In addition to the reasons stated on the record, the court notes as follows. PAG's memorandum provided no substantive arguments in support of its motion. As courts across the nation have done, the court will find that PAG has waived arguments that it did not raise in its brief. *See Ohr Somaych/Joseph Tanenbaum Educ. Ctr. v. Farleigh Int'l Ltd.*, 483 F. Supp. 3d 195, 206 n.6 (S.D.N.Y. 2020); *Magee v. Life Ins. Co. of N. Am.*, 261 F. Supp. 2d 738, 748 n.10 (S.D. Tex. 2003); *Front Range Nesting Bald Eagle Studies v. U.S. Fish & Wildlife Svc.*, 353 F. Supp. 3d 1115, 1130 n.9 (D. Colo. 2018); *Mesa Grande Band of Mission Indians v. Salazar*, 657 F. Supp. 2d 1169, 1173 (S.D. Cal. 2009). Furthermore, during the hearing PAG also withdrew the portion of its motion dealing with the interrogatory responses. And it could not identify specific deficiencies with the responses to requests for production.

Under Rule 37(a)(5)(B), because the court denied the motion to compel, the court must award Defendant Jonathan Fernandez the reasonable expenses, including attorney's fees, he

incurred in responding to the motion to compel unless certain exceptions apply. The court heard from PAG's counsel at the hearing and determined that none of the listed exceptions apply.

So PAG's counsel must pay the reasonable expenses Fernandez incurred in opposing the motion, including attorney's fees. Within 14 days after entry of this order, the parties must meet and confer to agree upon the amount Fernandez is entitled to recover. If the parties cannot agree on the appropriate amount, they should alert the Clerk of Court and then appear before Judge Numbers at 10:00 a.m. on Tuesday, June 1, 2021 for a hearing to resolve the dispute.

Dated: May 11, 2021

A handwritten signature in black ink, reading "Robert T. Numbers, II". The signature is written in a cursive, flowing style. The "R" is large and loops around the "o". The "T" is a simple vertical stroke. "Numbers" is written in a standard cursive, and "II" is at the end.

Robert T. Numbers, II
United States Magistrate Judge